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Supreme Court, U.S.
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No. 96-177

In the

Supreme Court of the United States

October Term, 1995

R. RAY SINGLETON,

Petitioner,

v.

CHRIST THE SERVANT EVANGELICAL LUTHERAN CHURCH, and THE ST. PAUL AREA SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA,

Respondents.

JEREMIAH OLSON,

Petitioner,

v.

LUTHER MEMORIAL CHURCH, and THE ST. PAUL AREA SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS

OPPOSITION BRIEF OF RESPONDENT CHRIST THE SERVANT EVANGELICAL LUTHERAN CHURCH

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QUESTIONS PRESENTED

1. Does the Establishment Clause of the First Amendment bar a civil court from adjudicating claims arising out of the appointment and discharge of a pastor and which are related to church governance.

2. Can the Supreme Court address issues which were not included in Petitioner's Questions Presented or raised in the lower courts.

LIST OF PARTIES

Petitioner Robert Ray Singleton
Respondent Christ the Servant Evangelical Lutheran Church
Respondent St. Paul Area Synod of the Evangelical Lutheran Church in America

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OPPOSITION BRIEF OF RESPONDENT CHRIST THE SERVANT EVANGELICAL LUTHERAN CHURCH

Respondent Christ the Servant Evangelical Lutheran Church respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Minnesota Court of Appeals' opinion in this case. This opinion is reported at 541 N.W. 2d. 606.

OPINIONS BELOW

In *R. Ray Singleton v. Christ the Servant Evangelical Lutheran Church and St. Paul Area Synod of the Evangelical Lutheran Church in America*, the Ramsey County District Court granted Defendants' motions for summary judgment in an opinion dated April 28, 1995. The Minnesota Court of Appeals affirmed the District Court's opinion and dismissed the case in an opinion dated January 9, 1996 and published at 541 N.W.2d 606 (Minn. Ct. App. 1996). The Supreme Court of Minnesota denied Singleton's Petition for Review in an Order dated March 19, 1996.

STATEMENT OF THE CASE

Respondent Christ the Servant Evangelical Lutheran Church (the "Church") is a member of the Evangelical Lutheran Church in America ("ELCA"). The ELCA, one of the largest Lutheran churches in America, is a hierarchical church organization comprised of member synods and churches. The Church also is a member of the Respondent St. Paul Area Synod ("Synod").

In the fall of 1987, the Church extended, and Petitioner Robert Ray Singleton ("Petitioner") accepted, an offer to be the Church's pastor pursuant to a Letter of Call and in accordance with the Constitution of the Synod. In essence, a Letter of Call is an ecclesiastical offer of employment extended by a church congregation to a pastor. Because of the spiritual relationship between a pastor and his congregation, a pastoral call continues only as long as there is a mutual agreement between the pastor and his congregation.

Petitioner's Letter of Call, which is overtly religious in its terms, provides the basis for his breach of contract claim, and

is one of the documents Petitioner sought to have interpreted by the civil courts of the State of Minnesota.[1] Petitioner's Letter of Call illustrates why Petitioner was not a mere "employee" of the Church. The Letter of Call describes Petitioner's employment responsibilities at the Church in essentially religious terms as follows:

> You are to preach and teach the Word of God; to conduct public worship; to administer the sacraments; to provide pastoral care and leadership . . . and to perform all duties of the gospel ministry in accordance with the confession and order of the Lutheran Church in America and as become one called to that holy office. . . ."

From the fall of 1987 until early 1994, Petitioner served as pastor of the Church. Throughout his term as pastor, Petitioner had conflicts with several Church members concerning his leadership, factionalism in the church caused by Petitioner, the content of Petitioner's sermons, and other issues. In late 1993, the Church Council asked Petitioner to leave a Council meeting and respond to a list of concerns the Council had raised about his leadership. In November of 1993, the Church appointed a task force to investigate why Church members had stopped making financial contributions to the Church. At the task force meetings, Church members identified general and specific concerns about Petitioner's service as pastor. The concerns were so significant that the task force eventually appointed a mediator to attempt to resolve the concerns. At or around the same time, a dispute arose between Petitioner and the Church about Petitioner's

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[1] Petitioner also requested the District Court to interpret the Church Constitution.

salary.[2] Although the Church eventually approved the $42,000 compensation package Petitioner had requested, the Church was in a severe financial crisis.

More than six months before the Petitioner's relationship with the Church ended, Petitioner began searching for a new call and, by November of 1993, Petitioner had made a decision to leave the Church.

In early 1994, because of the serious conflicts that existed between many members of the Church and Petitioner, the newly-elected Church Council President, Lois McKeag, informed Petitioner by letter that she was prepared to ask him to resign with severance pay. After reviewing this letter, Petitioner never returned to active ministry at the Church.

On April 13, 1994, Petitioner commenced suit against the Church, asserting claims for breach of contract, wrongful discharge, promissory estoppel, breach of the implied covenant and fair dealing, defamation, intentional infliction of emotional distress, and negligent infliction of emotional distress. On April 28, 1995, the Ramsey County District Court granted summary judgment in favor of the Church on all claims. Petitioner appealed the decision to the Minnesota Court of Appeals, which affirmed in a decision filed January 9, 1996. The Minnesota Court of Appeals declined to review Petitioner's claims for breach of contract, wrongful discharge and promissory estoppel, holding that they "relate to his appointment and discharge as a pastor and are fundamentally connected to issues of church governance," and involve

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[2] Petitioner's Letter of Call describes a compensation package which was subject to "annual review and amendment."

"strictly ecclesiastical concerns." *Court's Opinion at 7.* The Court concluded:

> Judicial review of Singleton's claims thus, would require an evaluation of scripture, doctrine and moral principles. This is precisely the type of searching inquiry that intrudes into church doctrine and church administrative matters and engenders a prohibited relationship between the Church and the judiciary.

Id.

The Court of Appeals also affirmed the entry of summary judgment on Petitioner's claims for breach of the implied covenant of good faith and fair dealing and intentional infliction of emotional distress, noting that:

> Judicial inquiry into Singleton's implied covenant claims would excessively entangle the court in the internal affairs of the Church . . .[and] . . .[t]o determine whether the Church intended to cause Singleton emotional distress, a court would need to review the motivations for the Church's actions. The First Amendment prohibits judicial inquiry into motivation for a Church's pastoral employment decisions.

Id. at 13.

Petitioner filed a petition for discretionary review with the Minnesota Supreme Court seeking review of the decision of the Minnesota Court of Appeals. His petition was denied on March 19, 1996.

SUMMARY OF THE ARGUMENT

The Court should deny Singleton's Petition for a Writ of Certiorari because there is no compelling reason for review of the decision of the Minnesota Court of Appeals. The Minnesota Court of Appeals' decision is entirely consistent with a long line of decisions of the United States Supreme Court holding that the First Amendment prohibits excessive entanglement of the judiciary in matters relating to the appointment and discharge of a pastor and which are related to church governance. The Minnesota Court of Appeals correctly followed this Court's prior rulings in concluding that the neutral principles doctrine is inapplicable to this case because it is reserved for matters relating to church property disputes. There is no compelling reason for review because the decision of the Minnesota Court of Appeals does not conflict with the decisions of any state courts of last resort or federal circuit courts. Finally, Petitioner waived any claims based upon violation of his rights of due process and equal protection by failing to raise them in his questions presented and in the lower courts.

REASONS FOR DENYING THE WRIT

I. THE COURT SHOULD DENY SINGLETON'S PETITION FOR A WRIT OF CERTIORARI BECAUSE THE DECISION OF THE MINNESOTA COURT OF APPEALS IS ENTIRELY CONSISTENT WITH THE DECISIONS OF THIS COURT.

In affirming summary judgment and declining to review Petitioner's claims, the Minnesota Court of Appeals properly applied the decisions of this court, which hold that the First Amendment prohibits excessive entanglement of the judiciary

in matters that relate to the appointment and discharge of a pastor and which are related to church governance.

Since the Supreme Court decision in *Serbian Eastern Orthodox Diocese v. Milivojevich* in 1976, it has been black-letter law that civil courts cannot inject themselves into the relationship between a church and its pastor. It is well-established that civil courts are barred from reviewing "core" questions of church discipline, doctrine and governance because of the potential for excessive governmental entanglement. *Milivojevich*, 426 U.S. 696, 721-23, 96 S. Ct. 2372, 2386-87 (1976). In *Milivojevich*, the United States Supreme Court held that the Illinois Supreme Court had "unconstitutionally undertaken the resolution of quintessentially religious controversies" when it overturned the decision of the Serbian Eastern Orthodox Church to suspend and defrock one of its bishops. *Milivojevich*, 426 U.S. at 721-23, 96 S. Ct. at 2385. The Supreme Court concluded that it was prohibited by the First Amendment from reviewing whether the Church had complied with its own laws and regulations when it removed the bishop. *Id.* at 2382.

Following *Milivojevich* and its progeny, in this case, the Minnesota Court of Appeals properly affirmed summary judgment and found court review of Petitioner's claims of breach of contract, wrongful discharge and promissory estoppel inappropriate because these claims "relate to his appointment and discharge as a pastor and are fundamentally connected to issues of church governance" and "involve strictly ecclesiastical concerns." *Court's Opinion at 7.* The court correctly noted that "adjudication of these claims would necessitate inquiry into the church's motives for proposing to decrease Petitioner's salary and for taking the other actions asserted by Petitioner as breaches of contract." *Id.* at 7. The Minnesota Court of Appeals' decision is consistent with this

Court's decision in *Milivojevich* and numerous opinions which have followed it. *See e.g. Scharon v. St. Luke's Episcopal Presb. Hosp.*, 929 F.2d 360, 363 (8th Cir. 1991) (declining to review discrimination claim of ordained priest); *Young v. N. Illinois Conf. of United Methodist Church*, 21 F.3d 184, 187 (7th Cir. 1994), *cert. denied* 115 S. Ct. 320 (1994) (declining to review pastor's claims based on misapplication of church procedures and laws); *Lewis v. Seventh Day Adventists Lake Region Conf.*, 978 F.2d 940, 942-43 (6th Cir. 1992) (declining to intervene in employment dispute between church and clergy); *Natal v. Christian and Missionary Alliance*, 878 F.2d 1575, 1578 (1st Cir. 1989) (refusing to review claim related to minister's employment and status).

Contrary to Petitioner's assertion, this Court's decision in *General Council on Finance and Administration of the United Methodist Church v. Superior Court of California*, 429 U.S. 1355, 99 S. Ct. 35 (1978), does not provide support for court intervention in a pastor/church dispute. That case dealt with a "secular dispute" between third parties and a religiously affiliated organization involving a claim of fraud and this court expressly distinguished it from an intrachurch dispute. *General Council on Finance*, 429 U.S. at 1372-73, 99 S. Ct. at 38.

The Minnesota Court of Appeals also properly concluded that the neutral principles doctrine articulated by this Court in *Jones v. Wolf* is inapplicable to Petitioner's breach of contract claims. *See Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020 (1979). In *Jones*, one of two feuding factions of a church sought declaratory and injunctive orders concerning their right to possession and use of church property. The Supreme Court held that a "State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute." *Jones*, 443 U.S. at 604, 99 S. Ct. at 3026. Since

Jones, this Court has never utilized neutral principles to adjudicate claims arising out of the relationship between a church and its pastor.[3] Accordingly, the Minnesota Court of Appeals' decision not to apply the neutral principles doctrine is completely consistent with this Court's decision in *Jones*.

Petitioner asserts that the "neutral principles" doctrine allows the Court to determine whether or not the Church adhered to its own procedures in terminating him. However, the neutral principles doctrine only permits a court to review non-doctrinal matters when "the analysis can be done in purely secular terms." *Minker v. Baltimore Annual Conference*, 894 F. 2d 1354, 1359-061 (D.C. Cir. 1990).

The Court of Appeals properly recognized that the neutral principles doctrine does not permit review in this case because the Church constitution is an ecclesiastical document, not a secular one, and it cannot be interpreted by a civil court without violating the Establishment Clause. Petitioner seeks to inject a civil court into the most delicate issues of religious faith and the spiritual relationship between a pastor and a congregation. If Petitioner's argument were accepted, then civil courts would have jurisdiction to interpret and apply ecclesiastical documents regarding church governance, a holding no court has accepted and a position directly at odds with the First Amendment. The Minnesota Court of Appeals found that "[e]ven if Minnesota law permitted a neutral principles of law analysis of a pastor's employment-related

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[3] In *Pilitech v. Deretich*, 328 N.W. 2d 696, 701 (Minn. 1982), the Minnesota Supreme Court extended the neutral principles doctrine of *Jones* to apply in church membership disputes. As the Court of Appeals properly held, this case involves neither a property dispute nor a membership dispute. *Court's Opinion at 8.*

claims, in this case the scriptural and other religious references in Petitioner's call letter and in the church's constitution "complicate secular analysis of the procedures described in those documents."[4] *Court's Opinion at 8.* As the Court properly noted:

> Judicial review of Singleton's claims, thus, would require an evaluation of scripture, doctrine and moral principles. This is precisely the type of searching inquiry that intrudes into church doctrine and church administrative matters and endangers a prohibitive relationship between the Church and the judiciary. . . .Singleton cannot prove his claims without asking the court to inquire into matters of ecclesiastical policy in the Church's constitution and in his letter of call. (Citations omitted.)

Id.

The decision of the Minnesota Court of Appeals is entirely consistent with both *Milivojevich* and *Jones* and thus Singleton's Petition for a Writ of Certiorari should be denied.[5]

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[4]
1. Petitioner's call letter discusses his spiritual obligations to the Church, including to 'preach and teach' the Word of God; to conduct public worship; to administer the sacraments; to provide pastoral care and leadership . . . .
2. Chapter 15 of the Church constitution addresses discipline of Church members and mandates that "prior to disciplinary action, reconciliation will be attempted following Matthew 18: 15-17."
3. The Church constitution states that the church-pastor relationship can be terminated if the pastor is disqualified on "grounds of doctrine, morality, or continued neglect of duty."

[5] In his brief, Petitioner does not address whether the Minnesota Court of Appeals properly dismissed his claim for defamation. Even if the Court

II. THERE IS NO COMPELLING REASON FOR REVIEW BECAUSE THE DECISION OF THE MINNESOTA COURT OF APPEALS IS CONSISTENT WITH THE DECISIONS OF STATE COURTS OF LAST RESORT AND FEDERAL CIRCUIT COURTS.

The decision of the Minnesota Court of Appeals is consistent with the overwhelming weight of legal precedent that prohibits court intervention in a pastor/church dispute. State courts of last resort have consistently held that a church's decision to terminate its pastor is a purely ecclesiastical matter that may not be reviewed by a civil court. For example, in *Pierce v. Iowa-Missouri Conf. of Seventh-Day Adventists*, 534 N.W.2d 425 (Iowa 1995), the court declined to review any aspect of a church's termination of a ministerial intern even though, quite similarly to the instant case, the ministerial intern argued that the court could review the allegedly secular issue of whether the church followed its established procedures. *Pierce*, 534 N.W.2d at 427-28. Likewise, in *Smith v. State*, 899 S.W.2d 31 (Tex. Ct. App. 1995), the Court of Appeals of Texas held that a church's decision to terminate a minister's license could not be reviewed in spite of the minister's claim that the court could apply neutral principles of law to determine if the church violated its own rules. *Smith*, 899 S.W.2d at 31. Finally, in another recent decision, *Jocz v. Labor and Industry Review Com'n.*, 538 N.W. 2d 588 (Wis. Ct. App. 1995), the Wisconsin Court of Appeals affirmed the lower court's decision that it was constitutionally prohibited from reviewing a church's decision not to renew the contract of its director of field education. *Jocz*, 538 N.W.2d at 599.

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considers this issue, there is no conflict between the decision of the Court of Appeals and decisions of state courts of last resort, and this issue does not justify the granting of certiorari.

See also Sabatino v. Saint Aloysius Parish, 672 A.2d 217, 221 (N.J. Super. A.D. 1996) (refusing to decide principal's discrimination complaint against parish).

The cases cited by Petitioner do not demonstrate a conflict between state courts of last resort. In fact, the cases cited by Petitioner demonstrate that the law has been applied consistently and is clear: courts may not review the circumstances underlying the termination of a pastor's employment with a church. *See e.g., McElroy v. Guilfoyle*, 589 A.2d 1082, 1084-85 (N.J. Super. L. 1990) (court refused to hear pastor's claims because they were "replete with ecclesiastical issues"); *Gillespie v. Elkins Southern Baptist Church*, 350 S.E. 2d 715, 719 (W.Va. 1986) (court could not decide pastor's wrongful discharge claim because it would almost "inevitably" require the court to inquire into church doctrine).

None of the other cases cited by Petitioner hold that a court can review a pastor's claims under circumstances similar to the instant case. *See, Bacher v. Metcalf*, 611 So.2d 1030, 1031 (Ala. 1992) (church agreed to court review and church members initiated action); *Fellowship Tabernacle, Inc. v. Baker*, 869 P.2d 578, 579 (Idaho Ct. App. 1994) (church instituted action and sought injunctive relief). *See also Lily of the Valley Spiritual Church v. Sims*, 523 N.E.2d 999, 1001 (Ill. Ct. App. 1 Dist. 1988); *First Union Baptist Church v. Banks*, 533 So.2d 1305, 1307 (La. Ct. App. 3 Cir. 1988). Two cases erroneously cited by Petitioner do not even address the issue of whether the court's review would impinge upon the church's First Amendment rights. *Robinson v. Davis*, 511 N.Y.S.2d 311 (A.D. 2 Dept. 1987); *Feldbin v. Temple Beth-El of Manhattan Beach*, 620 N.Y.S. 2d 113 (A.D. 2 Dept. 1994).

The Court of Appeals' decision also is consistent with the great weight of precedent from the federal circuit courts on this issue. *See, e.g. Scharon v. St. Luke's Episcopal Presb. Hosp.*, 929 F.2d 360, 363 (8th Cir. 1991); *Young v. N. Illinois Conf. of United Methodist Church*, 21 F.3d 184, 187 (7th Cir. 1994); *Lewis v. Seventh Day Adventists Lake Region Conf.*, 978 F.2d 940, 942-43 (6th Cir. 1992); *Natal v. Christian and Missionary Alliance*, 878 F.2d 1575, 1578 (1st Cir. 1989); *Hutchinson v. Thomas*, 789 F.2d 392, 396 (6th Cir. 1986), *cert. denied*, 107 S. Ct. 277 (1986); *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir. 1972), *cert. denied*, 409 U.S. 896 (1972); *Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church*, 860 F. Supp. 1194, 1199 (W.D. Ky 1994), aff'd 64 F.3d 664 (6th Cir. 1995).

III. PETITIONER WAIVED ANY CLAIMS FOR VIOLATION OF HIS RIGHTS OF DUE PROCESS AND EQUAL PROTECTION BY FAILING TO RAISE THESE CLAIMS IN HIS QUESTIONS PRESENTED AND IN THE LOWER COURTS.

Supreme Court Rule 14 expressly states that, "Only the questions set out in the petition, or fairly included therein, will be considered by the Court." Sup. Ct. R. 14.1(a). The questions set forth by Petitioner in his petition for a writ of certiorari do not refer to claims under the due process clause or the equal protection clause. Moreover, Supreme Court Rule 24 provides that "the brief may not raise additional questions or change the substance of the questions already presented in those documents." Sup. Ct. R. 24.1(a). Thus, Petitioner is barred from raising due process and equal protection arguments which were not included in his questions presented.

Petitioner likewise never raised these issues in the lower court. This Court has consistently held, that absent the most unusual circumstances, the court will not consider issues not raised or decided in the lower courts. *See, e.g. Chandris, Inc. v. Latsis*, ___ U.S. ___, 115 S. Ct. 2172, 2182-83 (1995); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 114 S. Ct. 1599, 1605 (1994); *Taylor v. Freeland & Kronz*, 503 U.S. 638, 645-46, 112 S. Ct. 1644 (1992); *Hudson v. McMillian*, 503 U.S. 1, 12, 112 S. Ct. 995, 1002 (1992).

Petitioner has not provided any legal basis to justify this Court's consideration of new issues. Accordingly, Petitioner's claims for violation of his rights of due process and equal protection do not warrant this Court's granting of certiorari.

CONCLUSION

For the reasons set forth hereinabove, Respondent Christ the Servant Evangelical Lutheran Church respectfully requests that the Petition of Robert Ray Singleton for a Writ of Certiorari be denied.

Respectfully submitted,

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